

Legal update by reference
to the months of **March** and **April 2010**

Legal Brief

Lina & Guia SCA

Corporate/
Commercial

New Amendments to the Insolvency Procedure

Law no. 25/2010 modifying and amending Law no. 85/2006 regarding the insolvency procedure ("**Insolvency Law**"), published in the Official Gazette no. 145 of 2 March 2010.

The Insolvency Law has been amended for the purpose of introducing, in addition to the old advertising terms stipulated by law, the requirement of advertising the insolvency of the company on the respective companies' websites.

These amendments have been proposed as a result of the frauds committed by many commercial companies still performing their activity after opening of insolvency procedure and promoting their services through the company's websites while their insolvency was underway.

Under the new law, the damages suffered by good faith third parties due to the companies' failure to comply with the advertising requirements provided by Insolvency Law, shall be repaired exclusively by the persons actually signing the documents in their capacity of legal representatives of the debtor, without affecting the debtor's patrimony.

Under the new regulation, violation of the provisions on advertising the insolvency represents a contravention and is punishable with a fine ranging from RON 10,000 to 30,000.

Amendments Regarding the Names of Associations and Foundations

Law no. 34/2010 modifying and amending art. 7 of the Government Ordinance no. 26/2000 regarding the associations and foundations, published in the Official Gazette no. 151 of 9 March 2010.

The new regulation defines the phrases or words forbidden by the Law of associations and foundations because of their likeliness to

cause confusion with the name of public authorities or institutions of national or local interest, which means the inclusion in the

name of associations or foundations terms such as "commissioner", "inspectorate" "guard," "academy", "authority", "council", "agency" or derivatives thereof.

Also, under the new law, registration of name of an association or foundation using the words "national" or "Romanian" or their de-

derivatives is carried out only with the prior consent of the Government General Secretariat.

The associations and foundations legally constituted on the date of entering into force of the new law, retain their old names.

Employment and Social Security Law

Technical Unemployment

Emergency Government Ordinance no. 4/2010 regulating certain social protection measures for the year 2010 ("**EGO 4/2010**"), published in the Official Gazette no. 93 of 10 February 2010.

In an attempt to mitigate the social consequences of the current economic difficulties, the Government passed EGO 4/2010 which stipulates that starting with February 2010 and ending not later than December 31, 2010 employers which suspend the employees' labour agreements due to a temporary cessation of activity may benefit from a favourable tax regime, subject to the following rules:

- during the term of suspension employees shall be paid with a compensation of at least 75% of their basic salary;
- both the employer and the employee are exempt from payment of social contributions (i.e. social insurance, unemployment insurance, insurance for labour accidents and occupational diseases, contribution to the salary guarantee fund, health insurance) levied on the compensation during such suspension of employment (but in any event for not

more than 90 days);

- the technical unemployment compensation is not subject to income tax for the entire duration of the suspension of employment (but in any event not for more than 90 days);
- the period of suspension of employment (the so-called 'technical unemployment') is considered vesting period in the computation of social security rights for the relevant employees;
- the exemptions and rights above apply only to the extent the temporary cessation of activity of the employer is generated by economical, technological, structural or similar difficulties – employers are bound to submit with the Territorial Labour Inspectorate an affidavit stating that such circumstances apply (and the State authorities shall be entitled to check the accuracy of such data).

Incentives for Creation of New Jobs

Emergency Government Ordinance no. 13/2010 regulating certain measures to stimulate the creation of new jobs and to reduce unemployment in 2010 ("**EGO 13/2010**"), published in the Official Gazette no. 136 of 1 March 2010.

Emergency Government Ordinance no. 13/2010 regulating certain measures to stimulate the creation of new jobs and to reduce unemployment in 2010 was enacted to address the effects of the economical crisis on the labour market in Romania and provides for certain tax exemption for employers creating new positions, subject to certain conditions briefly described below:

- employers that create new jobs in 2010 and hire on such positions unemployed individuals (registered with the Labour Occupation Agencies for at least 3 months prior to such hiring) benefit from an exemption from payment of social insurance contributions for such new employees, provided that such employees are maintained in service for at least 12 months;
- the exemption applies for a period of 6 months and relates only to the employer's

share of the social insurance contributions (i.e. social insurance, unemployment insurance, insurance for labour accidents and occupational diseases, contribution to the salary guarantee fund, health insurance), while the employees' quota of the same continues to be paid;

- the 6 month period during which the exemption applies constitutes vesting period in the computation of social security rights for the relevant employees;
- if the newly hired employees are terminated prior to the lapse of at least 12 months from employment, whether termination occurs by agreement between the employee and the employer, or by redundancy due to reasons not related to the employee, the employer shall return the entire amount for which it has received the exemption;

New Regulations for Medical Leave

Emergency Government Ordinance no. 36/2010 ("**EGO 36/2010**") modifying and amending Emergency Government Ordinance no. 158/2005 regarding the medical leave of the employees, published in the Official Gazette no. 268 of 26 April 2010.

In an effort to curb the unprecedented use of sick leave (often abusively), EGO 36/2010 institutes a procedure that would allow both the employer (as the payer of the compensation for the first five days of sick leave) and

representatives of the Health Insurance Fund (as the payer of the compensation following the first five days of sick leave) to verify whether the employee is effectively on sick leave. As such, EGO 36/2010 institutes the following rules:

- employees on sick leave shall be required to be present at their domicile (or any other address indicated to the attending physician) during specific time intervals so as to allow the payers of sick leave compensation to check the veracity of the illness;
- the payers of sick leave compensation may be accompanied by representatives of the police in such investigation;
- if the employees on sick leave refuse to

allow for such verification, or cannot be found present at the indicated locations, their right to sick leave compensation is terminated.

While EGO 36/2010 was enacted to address what is a real and significant issue currently in Romania, there are serious concerns as to its conformity with the Romanian Constitution and it is expected that it will be challenged before the Romanian Constitutional Court (the Romanian Ombudsman having already expressed such intention).

Banking

Legal Regime Applicable to Credit Institutions/ Non-Banking Financial Institutions

[Emergency Ordinance no. 26/2010 amending and supplementing the Emergency Government Ordinance no. 99/2006 on credit institutions and capital adequacy and other legislative acts was published in the Official Gazette, Part I, no. 208 of April 1, 2010.](#)

Given the global financial crisis, the commitments undertaken by Romania towards the International Monetary Fund and the necessity to transpose the Directive 2007/64/EC on payment services in the internal market (for which the deadline was November 1, 2009), the Government approved the Emergency Ordinance no. 26/2010 in order to

improve the legal regime applicable to credit institutions in financial distress by amending the said legal provisions regulating the special administration of the credit institutions and also to create the premises for setting-up new credit institutions with shareholders with good financial standing.

[NBR Regulation no. 5/2010 amending and supplementing the Regulation no. 20/2009 regarding the non-banking financial institutions was published in the Official Gazette, Part I, no. 281 of April 29, 2010.](#)

Among others, the Regulation no. 5/2010 imposes a reporting obligation for the non-banking financial institution whose exposures exceed the limits provided under the law. Thus, if, in an exceptional and well justified case, the exposures exceed the limits provided by the said regulation, the non-banking

financial institution is obliged to report immediately this situation to the National Bank of Romania, which may grant a term in which the respective non-banking financial institution must comply with the limits provided under the law.

NBR Order no. 5/2010 amending Order no. 12/2007 regarding the reporting of the capital minimum requirements for credit institutions was published in the Official Gazette, Part I of March 26, 2010. / NBR Regulation no. 4/2010 amending Regulation no. 24/2009 on the credit institutions' liquidity was published in the Official Gazette, Part I of March 26, 2010.

NBR Order no. 5/2010 restricts the date by which the credit institutions must submit the reports transmitted on a consolidated basis. Thus, whereas so far such reports could have been submitted until June 15 of the year following the reporting year, as of March 26, 2010, these reports must be submitted until May 15 of the year following the reporting year. Also, this order stipulates that, its pro-

visions are applicable starting with the 2009 financial statements.

Also, NBR Regulation no. 4/2010 extends the period in which the credit institutions should take the necessary steps in order to comply with its provisions regarding the credit institutions' liquidity, from 90 days as of its coming into force to 120 days as of its coming into force.

Capital Markets Fondul Proprietatea Trading

CNVM Order no. 8/2010 for the approval of Regulation no. 4/2010 on the registration with the National Securities Commission and the functioning of S.C. "Fondul Proprietatea" S.A., as well as the trading of the shares issued by the same, which was published in the Official Gazette of Romania, Part I, no. 161 of March 12, 2010.

The CNVM Order provides the obligation of registering S.C. Fondul Proprietatea S.A. ("Fondul Proprietatea") with CNVM as a special UCITS type, under the form of a closed investment company, set up to award compensations for properties which may not be restituted in kind, different from other UCITS categories.

The CNVM Order also provides for (i) rules on the operation of the Investment Management Company managing Fondul Proprietatea and (ii) a set of obligations regarding the approval for trading of the shares of Fondul Proprietatea. As the trading thereof is concerned, the Regulation provides that the rules of the market operator managing such market shall be applicable.

Use of the Global Accounts System

CNVM Order no. 10/2010 for the approval of the Regulation no. 5/2010 on the use of the global account system, the applying of mechanisms with and without pre-validating the financial instruments, the performance of the securities loan operations, the performance of the operations of establishment of the guarantees associated thereto and the short selling transactions was published in the Official Gazette, Part I, no. 169 of March 16, 2010. This Order no. 10/2010 came into force on the date of publication.

This regulation sets forth rules with respect to the use, by the central depository, the

market operator and the system operator, as the case may be, and the participants in the

system managed by aforementioned entities, of the global account system and of the mechanism with and without pre-validating the financial instruments, as well as rules with respect to the performance of securities loan operations, the performance of the operations of establishment of the guarantees associated thereto and the short selling transactions.

The Regulation no. 5/2010 stipulates the cumulative conditions required for the use of the global accounts systems and of the mechanisms with and without the prior vali-

ation of financial instruments for trading with and identification of holding of securities registered with the central depository system and contains a restricted listing of the purposes for which the securities loan operations may be carried out.

Also, provisions regarding the technical and operational requirements for the use of the global account system have been provided under Regulation no. 5/2010 and obligations to report and identify the holding of securities have been established for the participants.

CNVM Order no. 14/2010 for the approval of Regulation no. 7/2010 for the amendment of the Regulation no. 6/2009 on the exercise of certain rights of the shareholders in the companies' general meetings was published in the Official Gazette of Romania, Part I, no. 186 of March 24, 2010. This Order no. 14/2010 came into force on the date of publication.

According to Regulation no. 7/2010, the shareholders may present draft decisions for the items included or proposed to be included on the general meeting's agenda within 15 days following the date of publication of the convening notice, instead of presenting them

one business day prior to the general meeting, as previously provided under Regulation no. 6/2009. Also, pursuant to Regulation no.7/2010, if electronic means are used to appoint the shareholder's representative, the special power of attorney may be sent by extended electronic signature.

Real Estate Legal Regime of Land Restitution

[Law no. 67/2010 for modification of 3rd paragraph of Article 18 in Land Law no. 18/1991 \("Law no. 67/2010"\) published in Official Gazette of Romania, Part I, no. 215/06.04.2010](#)

Law no. 67/2010 operates a sole but relevant modification to the regime of land restitution. Article 18, paragraph 3, now stipulates that (i) the plots of land remained at the disposal of the local commissions for land restitution and (ii) the plots within the private ownership of the Romanian State (either located in the same locality or in other localities) can be reinstated to the former owners or their heirs, provided these persons were initially admitted to be indemnified (by other means

than restitution in kind) for their former properties.

The former language of the modified paragraph provided that the plots of land remained at the disposal of the local commissions for land restitution will be transferred in the private domain of the respective commune, town or city, in order to be allocated to agricultural exploitations or social investments.

Demolition of Certain Buildings

[The Government Emergency Ordinance no. 41/2010 regarding certain measures for strengthening the discipline in construction activities \("GEO no. 41/2010"\), published in Official Gazette of Romania, Part I, no. 278/28.04.2010](#)

GEO no. 41/2010 provides a derogatory procedure for demolition of certain buildings erected without a proper building permit.

In accordance with the newly enacted ordinance, all buildings with touristic destination, as well as any building within the 200-m wide strip along the Black Sea coastal line, provided such buildings (i) are located in the touristic resorts and in the localities along the Black Sea seashore and (ii) were built, either on private or public lands, without a proper building permit or in breach of the terms of the building permit, are to be demolished.

GEO no. 41/2010 derogates from the procedure provided by Law no. 50/1991 regarding authorisation of execution of construction works, mainly by allowing the buildings illegally build on private properties to be demolished without the approval of the courts. Secondly, identification of the buildings illegally built is to be made by representatives of the State Inspectorate for Constructions, while demolition is to be performed by the General Division of Public Works within the Ministry of Regional Development and Tourism.

Intellectual Property

Changes to the Trademark Law

Law no. 66/2010 ("**Law 66/2010**") amending Law no. 84/1998 on trademarks and geographical indications was published in the Official Gazette no. 226/09.04.2010.

Law 66/2010 seeks to harmonize national trademark law with EU legislation and standards of protection in the trademark field, by completely transposing Directive 2008/95/EC on the approximation of Member States' legislation relating to trademarks. Please find below a brief summary of the most important changes:

- terminology has been clarified by adding new definitions (e.g. definition of trademarks, trademark registration, prior trademarks, certification trademarks, notorious trademarks etc);
- the trademark registration procedure has been supplemented with a publication phase – as such, following application, the trademark is published, in electronic format, within 7 days from application;
- within 2 months as of publication of the trademark, any interested person may challenge the application for absolute grounds of refusal and, respectively, holders of prior trademarks may challenge the application for relative grounds of refusal;
- upon receipt of an opposition for relative grounds of refusal, the applicant for the trademark registration may require the holder of the previous trademark to prove (i) that such prior trademark has been effectively used in Romania for at least 5 years prior to the date of publication of the trademark pending registration and (ii) that there are justified reasons opposing the use of the trademark pending registration;
- new absolute grounds for refusal of an application for a trademark registration have been introduced – as such, trademarks containing signs with a high symbolic value (especially a religious symbol), as well as trademarks containing – without the approval of the competent bodies – emblems, coats of arms, heraldic signs or similar (other than as contemplated by the Paris Convention) cannot be registered as trademarks;
- a whole new chapter (Chapter XI1) is dedicated to Community trademarks, detailing on the procedure to be followed in case the Romanian Patent and Trademark Office receives an application for a Community Trademark, as well as clarifying the prerogatives of the Bucharest Tribunal in relation to disputes concerning Community trademarks;
- stricter sanctions have been included for violations of trademark regulations – thus, the following constitute criminal offences and may be punished by imprisonment from 3 months to 3 years or by a fine ranging from 50.000 RON to 150.000 RON (approximately between 11,900 EUR and 35,700 EUR): (i) counterfeiting a trademark; (ii) placing on the market of products bearing a trademark that is identical or similar with a registered trademark for products which are identical or similar and which causes damages to the holder of the registered trademark; (iii) placing on the market of products which bear geographical indications which indicate or suggest that the respective product is derived from a specific geographic region, other than the effective place of origin, for the purposes of misleading the public as to the geographic origin of the products.

Competition Revised Competition Rules for Distribution of Goods and Services

[Commission Regulation \(EU\) no. 330/2010 of 20 April 2010 on the application of Article 101\(3\) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.](#)

As of 20th of April, the European Commission has adopted a Regulation concerning the block exemption of agreements between manufacturers and distributors for the sale of products and services. The revised competition rules take into account the evolution of the Internet, in the past 10 years, related to online sales and cross-border commerce.

The principles of the Regulation basically remain the same, as companies are free in their decisions concerning the distribution of their products, provided that the agreements do not contain hardcore restrictions such as price fixing, and the market share of both the manufacturer and the distributor does not exceed 30%.

The Regulation provides that authorized online distributors shall have the freedom to sell on their websites as they do in their traditional shops and physical points of sale. Also, for selective distribution, the manufacturer is not allowed to limit the quantities sold online or charge higher prices for such products sold over the Internet. Moreover, as a consequence of the new Regulation, terminating transactions or re-routing consumers after they have entered credit card details showing a foreign address shall not be accepted.

The new Regulation and the accompanying Guidelines shall come into force as of June 2010 and shall be valid until 2022, with one-year transitional phase.

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